IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 755 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHAUHAN AIYUBKHAN ELAMKHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 755 of 2002

MR PK JANI for Petitioner No. 1

MR RC KODEKAR, APP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/07/2003

ORAL JUDGEMENT

This petition under Article 226 of the Constitution of India has been filed for quashing the order dated 1-4-2002 passed by the Sub Divisional Magistrate, Visnagar, Mehsana, as also the order dated

8-8-2002 passed by the Deputy Secretary, Home Department, Sachivalaya, Gandhinagar.

2. The facts in short are that a notice was issued to the petitioner to show cause as to why he may not be deported under Sec.56 of the Bombay Police Act for the term of two years from the areas of Mehsana, Patan, Ahmedabad City, Ahmedabad (Rural), Gandhinagar, Banaskantha and Sabarkantha districts for the reasons mentioned therein. Thereafter, order of externment was passed. It is the case of the petitioner that he has not been given any opportunity of hearing to defend his case. An appeal preferred before the appellate authority was dismissed on 8-8-2002 which is giving rise to the present petition.

3. Heard learned advocate for the petitioner and learned APP for the State.

4. Learned advocate for the petitioner has raised so many contentions in his petition. But at the time of arguments, he has restricted only on the point of show-cause notice and argued that the show-cause notice does not disclose the ground on which the order of externment is proposed to be made and hence, the ground which has been shown in the order is vague and authority has not considered the defence of the petitioner. He has also taken me through show cause notice and the order passed by both the authorities. He has relied upon the case of (Shri) Hussainmiya @ Jago Razakmiya Qadri Vs. State of Gujarat and Ors., 1999(2) G.L.H. 786 wherein it has been held in para 5 as under:

> "An order for externment has the necessary consequence of restricting the movement of a citizen. This restriction can be imposed only by proceeding in accordance with law. The law on the subject is that prior to the passing of an order of externment show-cause notice should be issued disclosing specific grounds on which an order for externment is proposed to be passed. If vague grounds are given in the show-cause notice, it will certainly prejudice the petitioner in effectively raising his defence. The next stage is that if, after the receipt of the show-cause notice, the cause is shown and the defence is tendered by the proposed externee, the same is bound to be considered objectively by the externing authority as well as by the Appellate Authority. No doubt, these authorities are not exercising functions of judicial authorities

> while passing these orders but they are certainly acting as quasi-judicial authorities, hence these orders should not be purely subjective, rather objectivity should be reflected in these orders. In case evidence is adduced by the two sides it should be objectively considered and reasons should be given why evidence of one side is believed and the evidence of the other side is not believed. If the orders are passed after complying with these formalities, then certainly it can be said that procedural safeguards were observed by the two authorities. In all events, violation of these safeguards will certainly render the impugned orders invalid."

It appears that the petitioner has not been given any opportunity of hearing to defend his case and since vague grounds are given in the show-cause notice, in view of the above reported judgment of this Court, the orders require interference. Since the petitioner succeeds only on one point, he does not press other grounds.

5. In view of the above, the petition is allowed. Order dated 1-4-2002 passed by the Sub Divisional Magistrate, Visnagar, Mehsana, as also the order dated 8-8-2002 passed by the Deputy Secretary, Home Department, Sachivalaya, Gandhinagar, against the externee are quashed and set aside. Rule is made absolute. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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